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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,178	08/05/2003	Douglas Barton	5659-3	7116
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		EXAMINER		
		A, PHI DIEU TRAN		
		ART UNIT		PAPER NUMBER
		3637		

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,178

Applicant(s)

BARTON, DOUGLAS

Examiner

Phi D. A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,20-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 20-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20, which depends on claim 4 which depends on claim 1, is indefinite as it restates in different term a structure that is already claimed. Applicant can be his/her own lexicographer, however, a structure cannot be called two different terms in the same claim. Applicant can further define a term with another term for the same structure, but applicant cannot claim both terms concurrently. Claim 20 includes all the limitations of claims 4 and 1. The limitation of "first/second flat proximal portion, first/second flat distal portion, angular portion" are what applicant calls "a first/second inner plate..., a first/second outer plate...a first intermediate plate...".

Claim 21 is also indefinite as it depends on claim 20.

The claims are examined as best understood.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4, 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kiedaisch et al (6309140).

Kiedaisch et al (figure 2) shows an energy absorbing and vehicle directing barrier system, comprising a barrier (18) located adjacent a vehicle path that extends parallel therewith, a first

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impact panel (figures 2, 4-5, the part noted by 44, 132, 138, 84, 54, 52) with a first proximal end (the end attached at 136, 138 figure 5), a first distal end (86), the first proximal end is fixedly mounted directly to the barrier to be immovable when the first impact panel is impacted by a vehicle, the first impact panel further having a first flat distal portion (the portion near the part designated by 86, part of which forming edge 88) between the first proximal end and the first distal end that is parallel to the barrier, the first impact panel further having a first flat proximal portion (52) between the first proximal end and the first distal end that is positioned adjacent the barrier and extends along therewith, the first impact panel further having a first angular portion (54) between the first proximal end and the first distal end that extends angularly outward from the barrier in a direction from the first proximal end to the first distal end, the first angular portion being angularly connected to the first flat, proximal portion and angularly connected to the first flat distal portion a second impact panel (figure 2, the second panel designated by 84 from the top) with a second proximal end (the end attached at 136, 138 figure 5) and a second distal end (the end designated by part 86), the second proximal end is fixedly mounted directly to the barrier to be immovable when the second impact panel is impacted by a vehicle, the second impact panel further having a second flat, distal portion (part 94 and its underlying support) between the second proximal end and the second distal end that is parallel to the barrier, the second impact panel further having a second flat, proximal portion(52) between the second proximal end and the second distal end that is positioned adjacent the barrier and extends along therewith, the second impact panel further having a second angular portion (54) between the second proximal end and the second distal end that extends angularly outward from the barrier in a direction from the second proximal end to the second distal end, the second angular portion is

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angularly connected to the second flat, proximal portion and angularly connected to the second flat, distal portion, the second flat distal portion is position adjacent and inwardly of the first distal end with the first distal end overlapping the second flat, distal portion and being unconnected thereto while being independently slidably movable relative to the second flat, distal portion, the first flat, distal portion and the second flat, distal portion extending parallel with respect to each other and to the barrier directing a vehicle impact the first impact panel and the second impact panel along an area extending across the first flat, distal portion and the second flat, distal portion in the direction of the vehicle path parallel to the barrier, a first crushable member (56) positioned between the first impact panel and the barrier, the first crushable(Webster Dictionary -> crush: to force together into a mass, to suppress or overwhelm as if by pressure or weight, the resilient structure shown inherently is able to be suppressed or force together into a mass, and the claimed language does not prevent the structure to later bounce back) member absorbing a portion of the collision energy of a vehicle impacting the first impact panel, a second crushable member (part 56 of the second panel) positioned between the second impact panel and the barrier to absorb a portion of collision energy of a vehicle impacting the first impact panel and the second impact panel and to direct a portion of collision energy along the length of the barrier system as the vehicle is directed by the first flat, distal portion and the second flat, distal portion parallel to the barrier, the first crushable member is dimensionally adapted to fit between the first flat distal portion and the second flat proximal portion, and between the first angular portion and the second angular portion enclosing the first crushable member and separating the first crushable member from the barrier, the second crushable member is dimensionally adapted to fit between the second flat, proximal portion and an

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adjacent impact panel enclosing the second crushable member and separating the second crushable member from the barrier, the first flat, distal portion is adjacent to the first crushable member and outwardly adjacent to the second flat distal portion to directly contact and deflect the first flat, distal portion against the first crushable member and the second flat, distal portion against the second crushable member upon vehicle impact of the first impact panel, the first impact panel/first inner plate having one more fastener holes (the holes for fastener 140) for fastening the first impact panel to the barrier, a pliant fastening system pliantly fastening the first impact panel to the barrier including pliable material adapted to be placed between the first impact panel and the barrier, a fastener (140) fastening the pliable material between the first impact panel and the barrier.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kiedaisch et al.

Kiedaisch et al shows all the claimed structural limitations. The claimed method steps would have been the obvious method steps of absorbing impact energy with Kiedaisch et al's structures.

Response to Arguments

6. Applicant's arguments with respect to claims 1, 4, 20-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different energy absorbing barriers.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phi Dieu Tran A

11/25/06